

DI
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable George N. LeightonCause No. 81 C 6434Date July 20, 1984

Title of Cause Midway Mfg. Co. v. North American Philips Consmer Electronics Corp., et al.
 Brief Statement of Motion Order denying motion for partial summary judgment

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorney. Please do this immediately below (separate lists may be appended).

O R D E R

The cause is before the court on the motion of plaintiff Midway Mfg. Co. for partial summary judgment on the issue whether Midway owns a valid copyright in the Pac-Man video game. Plaintiff seeks, in essence, a declaration from the court that, as a matter of law, Namco Ltd., its assignor, is the author of Pac-Man because it is not a derivative work based on Tomy's "Mr. Mouth" toy, and because Midway, accordingly, did not make a misrepresentation to the Copyright Office when it failed to disclose "Mr. Mouth" as a preexisting work. Confronted with virtually the same factual record, the court in Midway Mfg. Co. v. Bandhavi-America, Inc., 546 F. Supp. 125, 150-152 (D.N.J. 1982), found that there are sufficient similarities between the Pac-Man figure and Tomy's "Mr. Mouth" to warrant denial of summary judgment on issues related to Pac-Man's originality. Construing the record favorably to defendant, as it must on plaintiff's motion for summary judgment, the court finds itself in accord with this conclusion.

Plaintiff vigorously argues that the court must find as a matter of law that Pac-Man was not derived from "Mr. Mouth" because Pac-Man is "a complex audio-visual work." However, the fact that the Pac-Man figure is presented through a different medium does not preclude a finding of copyright infringement. See L. Batlin & Son, Inc. v. Snyder, 536 F.2d 486, 491 (2d Cir.), cert. denied, 429 U.S. 857 (1976). The court notes that even one of plaintiff's vice presidents, Mr. Jarocki, has testified on a prior occasion as to the similarity in appearance between Pac-Man and "Mr. Mouth." Live testimony and direct observation of the two together would be of great benefit to the court and any trier of fact in resolving the questions presented by the present motion. The motion for summary judgment, therefore, is denied.

DOCKETED

JUN 25 1984

Leighton